SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 1105

**UNITED STATES OF AMERICA ex rel.
RAYMOND EVERETT HACKLER,**

Petitioner,

v.

FRANK G. SAIN, Sheriff of Cook County, Illinois,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No.

UNITED STATES OF AMERICA ex rel.
RAYMOND EVERETT HACKLER,
Petitioner,

v.

FRANK G. SAIN, Sheriff of Cook County, Illinois,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on February 23, 1961, rehearing denied, April 7, 1961.

CITATION TO OPINION BELOW

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on February 23, 1961. On April 7, 1961, a petition for rehearing was denied. The

Opinion of the United States Court of Appeals for the Seventh Circuit is reported at 287 F. 2d 286. It is set out in full (including the dissenting opinion of Chief Judge Hastings) in Appendix B hereto.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on February 23, 1961; rehearing was denied April 7, 1961. The mandate of the Court of Appeals was stayed to May 26, 1961, by orders entered on April 11 and May 16, 1961, to afford Petitioner sufficient time to file a Petition for Writ of Certiorari. Jurisdiction of this Court is invoked under 28 USC 1254(1).

QUESTION PRESENTED

Whether an arrest and detention made under a warrant of arrest, *invalid on its face,* is a deprivation of "liberty" as guaranteed by the Fourteenth Amendment, where such invalid warrant is validated by the subsequent introduction of documents in aid of the warrant in a *habeas corpus* proceeding.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The constitutional provision involved is the Fourteenth Amendment to the Constitution of the United States. It is printed in Appendix A, *infra,* p. 9. The statutory provisions involved are Sections 2, 3 and 7 of the Uniform Criminal Extradition Act of Illinois (S.H.A., ch. 60, Sec. 2, 3, 7; ch. 60, Ill. Rev. Stats. Secs. 2, 3 7). These sections are printed in Appendix A, *infra,* p. 9.

STATEMENT OF THE CASE.

Petitioner was arrested in Illinois as a fugitive from justice under proceedings instituted by the State of North Carolina, seeking his extradition to that State. In making the arrest, defendant acted under the authority of a Governor's Warrant of Arrest issued pursuant to the Illinois Criminal Extradition Act (2 Ill. Rev. Stats. 1957, Ch. 60). That Statute states that the Governor of the State of Illinois may not issue any arrest warrant unless, prior thereto, there is laid before him a demand for extradition accompanied:

> "by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the Executive Authority of the demanding State that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole." (Section 3).

Section 7 of the Statute requires that if the Governor decides to comply with the demand, the Governor's Warrant of Arrest ". . . must substantially recite the facts necessary to its issuance."

The warrant under which Petitioner was arrested (and is now confined) did not contain such facts.

Petitioner first sought relief by *Habeas Corpus* proceedings in the Criminal Court of Cook County, Illinois, contending that since the rendition warrant was *invalid on its face*, he has been deprived of his liberty in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. Following a trial in

that Court, the writ was quashed and he was remanded to custody. On appeal, the Supreme Court of Illinois affirmed. *The People ex rel. Hackler* v. *Lohman*, 17 Ill 2d 78, 160 N.E. 2d 792 (1959), cert. den. 361 U.S. 963. The Court stated that the validity of the Governor's Warrant of Warrant of Arrest was:

> "*. . . at least doubtful and without more appearing we would hold the relator entitled to discharge.*" 100 N.E. 2d at 799 (Emphasis Supplied).

The Supreme Court of Illinois then held that the admitted invalidity of the Warrant was cured by documents introduced at the trial.

Petitioner then filed the instant *Habeas Corpus* proceeding in the District Court. The District Court took the case on the facts as shown in the Criminal Court of Cook County record, and on briefs submitted by both parties and quashed the writ. On appeal, the United States Court of Appeals for the Seventh Circuit affirmed by a divided court, Chief Judge Hastings dissenting. *United States ex rel. Hackler* v. *Sain*, 287 F. 2d 286, 290 (1961).

The Seventh Circuit decision quotes extensively from and relies upon the opinion of the Supreme Court of Illinois. The only reference to the violation of Petitioner's Federal rights is its brief conclusion that "the principles of construction governing extradition laws are different from those pertaining to penal laws." (287 F. 2d at 290).

REASONS FOR GRANTING THE WRIT

A. The Decision of the Court Below is in Conflict with Decisions of this Court.

The majority opinion below consists merely of long quotations from the opinion of the Supreme Court of Illinois,

and does not consider Petitioner's Federal rights. As Chief Judge Hastings said in his dissent:

> "... the central issue before us has been misconstrued. . . . Plaintiff does not question the authority of the Governor to *issue* the warrant. He challenges the authority of the arresting officer to *make an arrest* on the authority of an invalid warrant issued by the Governor.
>
> "An arrest pursuant to an invalid warrant is no different in law than an arrest with no warrant at all. To hold that such an arrest can be subsequently validated by retroactive procedures goes beyond the holding of any case brought to our attention. This seems to me to be a clear case of illegally depriving a party of his personal liberty at the time of his arrest." (287 F. 2d at 291) (Emphasis by the Court)

The procedure which the majority of the Seventh Circuit sanctions—allowing arrest on an invalid warrant so long as the invalidity is cured subsequent to the arrest—does not accord with the decision of this Court in *Henry* v. *United States*, 361 U.S. 98 (1959). In that case this Court held that an arrest:

> ". . . is not justified by what the subsequent search discloses. Under our system, suspicion is not enough for an officer to lay his hands on a citizen. It is better, so the Fourth Amendment teaches, that the guilty sometimes go free than that citizens be subject to easy arrest." (361 U.S. at 104).

The Fourth Amendment protection guaranteed in the Federal area by *Henry* extends to action of state officials. See *Elkins* v. *United States*, where this Court reaffirmed that:

> "The security of one's privacy against intrusion by the police . . . is . . . implicit in 'the concept of ordered

liberty' and as such, enforceable against the States through the Due Process Clause." (364 U.S. at 213). (Omissions by Court).

B. The Decision of the Court Below has Far-Reaching Effects in Depriving Citizens of their Constitutional Rights.

The Seventh Circuit has promulgated a rule of law in this case which states that the arrest of a citizen under the authority of a warrant which is invalid on its face does not deprive him of his liberty without due process, if the invalid warrant is validated by the subsequent introduction of evidence to support it.

This procedure is analogous to allowing arrest without a warrant, or on a blank warrant, so long as evidence of guilt is later established. It is the "easy arrest" test which was condemned by this Court in *Henry*. It poses the very dangers against which James Otis inveighed (Quincy's Mass. Rep. 1761-1772, Appendix p. 469)—dangers which this Court has been vigilant to protect against for almost two hundred years.

Further, the Court of Appeals explicitly holds that the due process test in extradition arrests is different than the test in other arrests. (287 F. 2d at 290). It overlooks the fact that an arrest on an extradition warrant deprives a person of quite as much liberty as any other arrest. An arrest on an invalid warrant, as in this case, is so plain and fundamental a deprivation of the right to personal liberty without due process of law as to warrant review by this Court.

CONCLUSION.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX "A".

Following is Article XIV, Section 1 of the Constitution of the United States:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Following, are the applicable sections of the Uniform Criminal Extradition Act of the State of Illinois:

Uniform Criminal Extradition Act of Illinois (S.H.A., ch. 60):

Section 2: *Fugitive from Justice: Duty of Governor*

"Subject to the provisions of this Act, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this State to have arrested and delivered up to the Executive Authority of any other state of the United States any person charged in that State with treason, felony, or other crime, who has fled from Justice and is found in this State. 1955, July 14, Laws 1955, p. 1982, Sec. 2." (S.H.A. ch. 60, Sec. 19).

Section 3: *Form of Demand*

"No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under Section 6,[1] that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by

[1] Section 23 of this chapter.

information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the Executive Authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the Executive Authority making the demand. 1955, July 14, Laws 1955, p. 1982, Sec. 3." (S.H.A. ch. 60, Sec. 20).

Section 7: *Issue of Governor's Warrant of Arrest; Its Recitals*

"If the Governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance. 1955, July 14, Laws 1955, p. 1982, Sec. 7." (S.H.A. ch. 60, Sec. 24).

APPENDIX "B".

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 13119 SEPTEMBER TERM, 1960 JANUARY SESSION, 1961

UNITED STATES OF AMERICA, ex rel. RAYMOND EVERETT HACKLER,
Plaintiff-Appellant,
v.
FRANK G. SAIN, SHERIFF OF COOK COUNTY, ILLINOIS,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

February 23, 1961

Before HASTINGS, *Chief Judge*, and SCHNACKENBERG and KNOCH, *Circuit Judges*.

SCHNACKENBERG, *Circuit Judge*. Raymond Everett Hackler, plaintiff, has appealed from an order of the district court, quashing a writ of habeas corpus issued upon his petition and remanding him to the custody of Frank G. Sain, sheriff of Cook county, Illinois, defendant.

The pertinent facts are not disputed.

Plaintiff was arrested in Illinois by defendant, who acted under the authority of a warrant of arrest issued by the governor of Illinois on February 25, 1958, reading, in part:

"The Governor of the State of North Carolina demands of me the arrest and delivery of Raymond Everett Haskler as a fugitive from justice and has produced and laid before me a copy of an commitment, warrant, certified as authentic by the said Governor and duly authenticated and charging the said Raymond Everett Hackler with having committed on the 19th day of June A.D. 1955, in the County of Guilford, in the said State of North Carolina, the crime of reckless driving, no Operator's license, drunk driving and no Operator's license, which the said Governor certifies to be a crime under the laws of said State of North Carolina . . . ."

On March 17, 1958, relator filed a petition for writ of habeas corpus in the Criminal Court of Cook County, Illinois, which, as supplemented thereafter, contended that he had been detained in violation of his constitutional rights because the warrant of arrest was wholly invalid.

Following a trial, the court quashed the writ and remanded relator to custody for rendition to the State of North Carolina. The judgment of the Criminal Court was affirmed by the Supreme Court of Illinois, *The People ex rel. Hackler* v. *Lohman, Sheriff*, 17 Ill. 2d 78.

Relator's petition charges that he is deprived of due process of law in violation of amendment XIV of the constitution of the United States. He states that the Supreme Court of Illinois held that the process was invalid.

From the opinion of that court, at 80, it appears:

"The sheriff's return to the writ of *habeas corpus* alleged that relator was in his custody by authority of the rendition warrant issued by the Governor of Illinois on requisition of the Governor of North Carolina; that all papers were legal; that relator was a fugitive from justice charged with offenses against the laws of the State of North Carolina and was the

person named in the extradition papers and Governor's warrant. No papers or documents accompanied the return. At the hearing the defendant introduced only the rendition warrant. Relator then moved for a discharge on the ground that the warrant was void on its face. After argument by counsel in support of the motion, the trial judge stated that he did not believe the case should be decided on a technicality, and counsel expressed a desire to offer evidence. The court indicated approval and stated that it did not wish to rule on the case piecemeal.

"The relator then testified that he was the person named in the Governor's warrant; that he had lived in Chicago two years; that he was convicted in the State of North Carolina on the charges named in the warrant and was sentenced to imprisonment, but had served his full sentences; * * *.

"After relator had testified, his counsel introduced, without objection, copies of certain documents which had been filed by the North Carolina authorities in support of the extradition proceedings. These included the request of its Governor for the return of relator as a fugitive and the sworn statement of the director of prisons that relator had been convicted of certain crimes and sentenced to imprisonment; and that he had escaped while serving the sentences. Copies of the commitments were also offered in evidence.[1]

---

[1] "These papers, certified as authentic by the Governor of North Carolina, showed that relator was convicted in the municipal court of High Point, on June 27, 1955, of reckless driving, drunk driving and driving with no operator's license and sentenced to nine months imprisonment; that on July 7, 1955, he was convicted in the county court of Rowan County, of the crime of false pretense and sentenced to jail for eighteen months, the prior sentence being adjusted to run concurrently with this sentence; that on July 8, 1955, he was also convicted of larceny by trickery in the county court of Davidson County upon which he was sentenced to twelve months confinement to begin at the expiration of the latter sentence; that on March 12, 1956, while serving these sentences, he escaped from Cabarrus County prison camp, at Mt. Pleasant; and that his extradition and return is requested for the purpose of completing the sentences. The affidavit of the director of prisons was sworn to before a magistrate and the usual certificate of magistracy was attached. * * *"

"The relator takes the position that the trial court could not properly consider the contents of the supporting papers in determining the legality of his arrest and detention, but must decide the case by reference to the provisions of the rendition warrant alone; and that since the latter document failed to comply with sections 3 and 7 of the Uniform Criminal Extradition Act, (Ill. Rev. Stat. 1957, chap. 60, pars. 20 and 24,) it was void and the relator was entitled to discharge."

Inasmuch as plaintiff, in the case at bar, relied upon the Illinois Act just referred to, we proceed with the Illinois court's discussion of that Act, in connection with plaintiff's resistance to extradition. At 81, the court said:

"The rendition warrant issued by the Governor of Illinois, after reciting the request by the Governor of North Carolina that Hackler be returned as a fugitive, stated that there had been produced and laid before him 'a copy of an commitment, warrant certified as authentic by the said Governor' charging Hackler with having committed in the State of North Carolina the crimes of 'reckless driving, no operator's license, drunk driving and no operator's license' which are certified to be crimes under the laws of that State; and that he is satisfied that Hackler is a fugitive from justice, has fled from the State of North Carolina and has taken refuge in this State. The warrant then commands the arrest, the production of the fugitive in court and his delivery to the agent of the demanding State unless discharged.

"Section 3 prescribes the form and contents of the demand for extradition and specifies that the documents which shall accompany it shall be 'a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof,

together with a statement by the Executive Authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole.'

"Section 7 sets forth the form and contents of the Governor's warrant in these words: 'If the Governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person who he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.'

"This poses the question of whether a rendition warrant reciting that it is based upon the production of a 'commitment, warrant' meets these statutory requirements. However, before resolving this question, it is proper that we recur to the fundamental principles of the law of extradition."

and at 87:

"Section 3 specifies, in the alternative, that (1) a copy of an indictment or an information supported by affidavit, (2) a copy of an affidavit made before a magistrate, together with a copy of any warrant which was issued thereupon, (3) a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding State that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole, must be laid before the Governor of the asylum State with the demand. (Ill. Rev. Stat. 1957, chap. 60, par. 20.) Except for the third statement, these requirements are essentially the same as those found in the Federal act. (U.S. Rev. Stat., sec. 5278, Title 18 USCA, par. 3182). This specification appears to have been added to meet the case of the escaped convict, a situation not necessarily encompassed where the showing is to be made by indictment or affidavit.

"We see no conflict between the provisions of section 3 and the Federal act, since courts have long held that an escaped convict is a fugitive from justice as well as an accused person and properly subject to extradition. * * * [the Governor's warrant] should recite, among other facts, substantial compliance with at least one of the documentary requirements specified in section 3."

The Illinois court, at 88, then stated:

"The real issue in a *habeas corpus* proceeding is whether the prisoner is legally restrained. In an extradition proceeding, the initial inquiry is whether the rendition warrant is *prima facie* sufficient to justify the detention. (*People ex rel. Poncher* v. *Toman*, 371 Ill. 275.) By the weight of authority, however, legal deficiencies in the rendition warrant may be cured, in *habeas corpus* proceedings for the discharge of the fugitive, by * * * producing at the hearing the papers on which the warrant was issued which show on their face that they are in due legal form, and that the warrant was justified. 22 Am. Jur., par. 51, page 289; 89 A.L.R. 599."

The court then pointed out that an examination

"* * * of the documentary exhibits which were filed with the request for extradition in this case shows that the Governor was fully justified in issuing the rendition warrant. The affidavit of the director of prisons stated that relator was convicted of certain crimes in the State of North Carolina; that he was sentenced to imprisonment therefor; that while serving his sentences and before the terms had expired he unlawfully escaped from confinement and fled to this State. The affidavit was sworn to before a magistrate, as required. The facts established by these exhibits afforded a proper legal basis for extradition. *People ex rel. Bell* v. *Mulcahy*, 392 Ill. 290, 293.

> "In addition, the commitment papers show the conviction, judgment and sentence in each case, as well as a statement by the Governor of the demanding State that relator escaped from confinement while serving his sentences and before the terms had expired. All papers were authenticated by the Governor of North Carolina. There was substantial compliance with the provisions of section 3 of the Uniform Criminal Extradition Act. * * *"

In the case at bar the documents filed with the requisition for extradition were all brought to the attention of the district court by relator, who voluntarily introduced them as evidence. He thereby became bound by their effect, whether favorable or unfavorable to his contentions.

It is well to bear in mind that the principles of construction governing extradition laws are different from those pertaining to penal laws. As we pointed out in *United States* v. *Mogering*, 54 F.2d 621, 622—

> "In the removal of fugitives, that strict accuracy of statement and proceedings is not required as in case of indictments. *Munsley* v. *Claugh*, 196 U.S. 364, 25 S. Ct. 282, 49 L. Ed. 515. As between the states, there is not invasion of the fugitive's rights to remove him to another state to be there tried for an alleged offense for which he might have been required to undergo trial had he never left it. The constitutional provision for extradition between the States (Const. art. 4, § 2, cl. 2) and the statutes thereon (18 USCA § 662) 'have not been construed narrowly and technically by the courts as if they were penal laws, but liberally to effect their important purpose.' * * *"

We hold that relator has not sustained his charges that his federal constitutional rights have been violated.

For these reasons, we affirm the order of the district court from which this appeal was taken.

ORDER AFFIRMED.

No. 13119

HASTINGS, *Chief Judge*, dissenting. Plaintiff was arrested in Illinois as a fugitive from justice under proceedings instituted by the State of North Carolina seeking his extradition to that state. In making the arrest, defendant acted under the authority of a Governor's Warrant of Arrest issued pursuant to the Illinois Uniform Criminal Extradition Act. 2 Ill. Rev. Stats., 1957, ch. 60.

Plaintiff contends that since the rendition warrant *was invalid on its face*, he has been deprived of his liberty in violation of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

Plaintiff first sought relief by a *habeas corpus* proceeding in the Criminal Court of Cook County, Illinois. Following a trial in that court, the writ was quashed; and he was remanded to custody. On appeal, the Supreme Court of Illinois affirmed. *The People ex rel.* v. *Lohman*, 17 Ill. 2d 78, 160 N.E. 2d 792 (1959), cert. denied, 361 U.S. 963.

Plaintiff then filed the instant *habeas corpus* proceeding in the district court. It appears that the district court took the case on the facts as shown in the state court record and on briefs submitted by both parties and subsequently quashed the writ.

The sole question before us is whether an arrest and detention made under a warrant of arrest, *invalid on its face*, is a deprivation of "liberty" as guaranteed by the Fourteenth Amendment, where such invalid warrant is validated by the subsequent introduction of documents in aid of the warrant in a *habeas corpus* proceeding.

The resolution of this case is made difficult because no one disputes the fact that the rendition warrant is void on its face. The invalidity arises from the failure of the

warrant to "substantially recite the facts necessary to the validity of its issuance," as required by Section 7 of the Illinois Uniform Extradition Act, *supra*.

In the *Hackler* case, *supra*, the Supreme Court of Illinois said:

> "The provisions in the uniform act relative to the form and contents of the Governor's warrant are found in section 7 which sets forth that it 'must substantially recite the facts necessary to the validity of its issuance.' (Ill. Rev. Stat. 1957, chap. 60, par. 24.) This is a codification of the former law that the warrant must recite all jurisdictional facts necessary to its validity." 17 Ill. 2d at 86.

The Court concluded:

> "In view of the requirements of the statutes, State and Federal, and of the numerous decisions upon the question, we are persuaded that the words 'commitment, warrant' as recited in the warrant in question render its validity at least doubtful *and, without more appearing, we would hold the relator entitled to discharge.*" (Emphasis added.) *Id.* at 88.

The Supreme Court of Illinois further held that "[a]n examination of the documentary exhibits which were filed with the request for extradition in this case shows that the Governor was fully justified in issuing the rendition warrant." *Id.* at 88-89. The majority opinion of our court follows the holding of the Illinois court.

With deference, I believe the central issue before us has been misconstrued. Plaintiff does not question the authority of the Governor to *issue* the warrant. He challenges the authority of the arresting officer to *make an arrest* on the authority of an invalid warrant issued by the Governor.

An arrest pursuant to an invalid warrant is no different in law than an arrest with no warrant at all. To hold that

such an arrest can be subsequently validated by retroactive procedures goes beyond the holding of any case brought to our attention. This seems to me to be a clear case of illegally depriving a party of his personal liberty at the time of his arrest.

Further, it is held by the majority and by the Illinois court that because plaintiff brought to the attention of the trial court the documents filed with the requisition for extradition, plaintiff is bound by them. The Illinois Supreme Court opinion, quoted by the majority here, states:

> "At the hearing the defendant introduced only the rendition warrant. Relator then moved for a discharge on the ground that the warrant was void on its face. After argument by counsel in support of the motion, the trial judge stated that he did not believe the case should be decided on a technicality, and counsel expressed a desire to offer evidence. The court indicated approval and stated that it did not wish to rule on the case piecemeal." *Id.* at 80.

Plaintiff then introduced oral and documentary evidence on the question of *fugitivity.*

Under these circumstances I deem it improper to hold, in effect, that plaintiff has waived his principal contention that the warrant was void on its face.

No one disputes that the Governor of Illinois had authority to issue a rendition warrant in this case. Under the appropriate Illinois statute there was a proper way for this to be done. The Governor, perhaps inadvertently, chose a wrong way to do it. An illegal arrest followed, and plaintiff was thereby detained under an invalid process. To cure such a deprivation of personal liberty by resort to subsequent consideration of evidence showing that the Governor had authority to issue a valid warrant is to do

violence to established concepts of due process. On this narrow issue I can find no rational basis for distinguishing the instant arrest from that in a criminal proceeding.

It is my considered judgment that the State of Illinois should proceed in a proper manner as it now appears it may do. I would reverse the judgment of the district court and give opportunity for the State to comply fully with its own statutory requirements.

A true Copy:
Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.

SUPREME COURT.

Office-Supreme Court, U.S.
FILED
JUL 27 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 105

UNITED STATES OF AMERICA, EX REL.
RAYMOND EVERETT HACKLER,
Petitioner,

vs.

FRANK G. SAIN, SHERIFF OF COOK COUNTY, ILLINOIS,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

QUESTION PRESENTED.

The petitioner's statement of the question is too broad. The question should be limited as follows: Is a prisoner in an extradition proceeding detained illegally under a rendition warrant, which, according to State law, includes a defective recital where papers of the extradition file, executed in compliance with the requirements of federal law by officials of the demanding State and introduced into evidence by the prisoner, demonstrate conclusively that he has, in fact, committed a crime in the demanding State and that he is a fugitive from the latter State?

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED.

The applicable constitutional provision involved is Section 2, Article IV of the Constitution of the United States, which is set out in Appendix A (*post*, p. 9). The pertinent federal statute is Section 3182 of the Act of June 25, 1948 (62 Stat. 822; 18 USCA, Section 3182) which is also printed in Appendix A (*post*, p. 9).

ARGUMENT.

The solution to the controversy in this *habeas corpus* proceeding turns on a very narrow issue: Are the federal rights of a prisoner in an extradition proceeding violated when the papers of the extradition file are considered by a court to cure a defective recital in a rendition warrant? We submit that the answer should be in the negative. The adoption of this position by a majority of the Court of Appeals for the Seventh Circuit is consistent with the applicable federal constitutional and statutory enactments on extradition, and , therefore, requires no review by this Court by way of *certiorari.*

I.

THE DECISION BELOW IS CORRECT.

The law of extradition is federal in origin. It is bottomed upon and controlled by the federal constitutional provisions of Section 2, Article IV (*post*, p. 9) and the statutory provisions of Section 3182 of the Act of June 25, 1948 (62 Stat. 822; 18 USCA, Section 3182, *post*, p. 9), which are designed to effectuate the constitutional mandate. The *quantum* or standard of federal rights to be applied in the determination of the claimed illegal detention of the petitioner must necessarily be measured by the cited federal provisions.

In substance, Section 3182 of the Act of June 25, 1948 requires a governor of an asylum State to cause the arrest of a person when the executive authority of any other State or Territory demands such person as a fugitive and "produces a copy of an indictment found or an affidavit made

before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, * * *."

These federal provisions oblige the governor of the asylum state to determine, before complying with the extradition demand, whether the person demanded is substantially charged with a crime and whether he is a fugitive from justice. *Roberts v. Reilly*, 116 U. S. 80, 95. This Act provides a complete and summary proceeding for the interstate rendition of fugitives and it should be accorded a liberal construction to achieve the constitutional purpose. *Munsey* v. *Clough*, 196 U. S. 364, 372; *Biddinger* v. *Commissioner of Police*, 245 U. S. 128, 133.

The petitioner does not dispute that these federal requirements have been fulfilled. As noted by the Court below, his own exhibit in the State court proceeding, namely the extradition file, clearly demonstrates that he is charged with a crime in North Carolina and is a fugitive. The petitioner does not deny that the North Carolina authorities transmitted this information to the Governor of the State of Illinois by means of the affidavit of the director of prisons, sworn to before a magistrate, which affidavit was a part of the extradition file.

It is undisputed in this record that the petitioner was accorded every right guaranteed by federal extradition law. Accordingly, the Court below was correct in its determination that none of petitioner's federal rights was violated and that he is not illegally detained.

II.

THERE IS NO IMPORTANT FEDERAL QUESTION.

Although the petitioner does not dispute the fact that all requirements of federal extradition law have been fulfilled, he bases his claim of illegal detention wholly upon the irregularity in the rendition warrant.

It is significant, however, that the Act of June 25, 1948, which controls and defines the petitioner's rights in an extradition proceeding, does not specify the requirements of a rendition warrant. It does not provide for a warrant. Provision for the rendition warrant is made by Section 7 of the Uniform Criminal Extradition Act of Illinois (Laws of Illinois, 1955, p. 1984; Chapter 60, Section 24, Illinois Revised Statutes, 1957). The General Assembly of the State of Illinois properly legislated in the area of interstate rendition so long as its legislation was consistent with federal constitutional and statutory requirements. *Biddinger* v. *Commissioner of Police*, 245 U. S. 128, 134. By the same token, the Supreme Court of Illinois could properly determine that a defective recital in a rendition warrant, *issued pursuant to Illinois and not federal law*, could be cured by the properly executed papers of the extradition file when those papers, introduced into evidence by the petitioner, clearly demonstrate that the Governor of the State of Illinois, consistent with federal law, was legally justified in issuing the warrant and that the petitioner was not deprived of any right under federal extradition law. Those papers, particularly the affidavit of the North Carolina director of prisons, executed before a magistrate, show that the petitioner was, in fact, charged with a crime in North Carolina and is a fugitive.

Accordingly, we submit that this controversy presents a question of the judicial interpretation of an Illinois en-

actment in the field of interstate rendition and not the deprivation of any of petitioner's rights under federal extradition law.

III.

THERE IS NO CONFLICT OF DECISION.

The petitioner has utterly failed to demonstrate any conflict between the decision of the Court below and prior decisions of this Court. The cited cases of *Henry* v. *United States*, 361 U. S. 98 and *Elkins* v. *United States*, 364 U. S. 206, have no relevancy to the law of interstate rendition. Both cases relate to the Fourth Amendment, which expressly deals with searches and seizures and the issuance of search warrants. The rights of a prisoner in an extradition proceeding, however, are defined by Section 2, Article IV of the Constitution of the United States and Section 3182 of the Act of June 25, 1948.

On the contrary, the view adopted by the majority of the Court below finds ample support in federal as well as State decisions. The principle that a defective recital in a governor's rendition warrant can be cured by papers in the extradition file is not novel or unique. *Ex parte Dawson*, 83 F. 306, 309 (C. A. 8); cert. denied 170 U. S. 705; *Collins* v. *Traeger*, 27 F. 2d 842, 844 (C. A. 9); *U. S. ex rel. Silver* v. *O'Brien*, 138 F. 2d 217, 218 (C. A. 7); cert. denied 321 U. S. 766; *In re Romaine*, 23 Cal. 585, 592; *Lacondra* v. *Hermann*, 343 Ill. 608, 614; *State ex rel. Grande* v. *Bates*, 101 Minn. 303, 308; *People ex rel. Jourdan* v. *Donohue*, 84 N. Y. 438, 441; *State ex rel. Sivley* v. *Hackett*, 161 Tenn. 602, 605; *Schriver* v. *Tucker* (Fla.), 42 So. 2d 707, 709; *Harris* v. *State*, 257 Ala. 3, 8.

CONCLUSION.

In view of the foregoing, we respectfully submit that this petition for writ of *certiorari* should be denied.

Respectfully submitted,

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APPENDIX A.

Statutory Provisions Cited and Quoted.

Section 2, Article IV, Constitution of the United States:

> "A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

Act of June 25, 1948, Ch. 645, 62 Stat. 822, Sec. 3182 (18 USCA, Section 3182):

> "Whenever the executive authority of any State or *Territory demands* any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged."